

Atty. Dkt. No. 084561-0103

REMARKS

Claims 181-183, 187-193, and 196-198 have been amended. New claims 200-223 have been added to the case to further protect applicant's invention.

The drawings were objected to based on an informality with item 10 in Fig. 1 not being labeled as described in the specification. A proposed correction to Fig. 1 is provided for the examiner's approval.

The claims were rejected under 35 USC 101 as being directed to non-statutory subject matter. Various amendments have been made to clarify that selected operations are electronic operations. Regarding the examiner's comments relating to the claims merely reciting a manipulation of an abstract idea, it is clear that real-world incentives are distributed at the end of this process—which is a tangible and useful result. See MPEP 2106.

The examiner has rejected selected claims under 35 USC 102 (e) and 103 over Day. The examiner has also rejected claim 199 under 35 USC 103 over Day in view of Gardenschwartz. These rejections are respectfully traversed and reconsideration thereof is requested.

The Examiner rejects claim 181 under 35 U.S.C. §102(e) as being anticipated by Day. According to the Manual of Patent Examination Procedure a 35 U.S.C. 102 rejection should be made "*if no differences are found between the claimed invention and the prior art*" (MPEP 2100-21).

Claim 181 comprises at least the following three elements that are not present in Day. The absence of only a single of these three elements would be sufficient to render a 102 rejection invalid.

First, claim 181 comprises a "different incentive function associated with each of a plurality of advertisers". The Examiner references col. 4, lines 18-31 to claim that this element is present or implicit in Day. Contrary to the assertion of the Examiner, the quoted/referenced passage in Day does not comprise this element as defined in the specification, nor is an incentive function, which "calculates a particular number to indicate

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an amount or a distribution priority," as the claims have now been amended to recite, implicit in Day's discussion of parameters. Parameters and scores are often used to select or deselect audiences, and do not require or necessitate an incentive function that calculates a particular number.

Second, claim 181 comprises the calculation of distribution priorities (a distribution that has been prioritized), which have clearly been defined as different and separate from whether or not a buyer entity qualifies for an incentive in the application. Contrary to the assertion of the Examiner, Day does not contain a setting of distribution priorities after a threshold/decision has been made to distribute a given set of incentives.

Third, claim 181 comprises the distribution of multiple incentives from multiple advertisers with an individually calculated incentive level ("determining an incentive level based at least in part on the incentive function," i.e., after an incentive has been determined to be distributed, calculating the level of the distribution) and distribution priority ("electronically determining a particular distribution priority associated with each of the incentives for each of the buyer entities") for each incentive distributed to each buyer entity. This element is also completely absent in the Day in-store coupon distribution system. Day does not disclose a distribution that is prioritized.

Other elements of claim 181 are also absent in Day but their discussion has become unnecessary in light of the deficiencies mentioned above.

Because Day does not contain the elements of claim 181, claims dependent on 181 are also deficient. With respect to claims 181-183, 185-188, 190-198, although many of these claims add elements that are not comprised in Day, in our opinion their detailed discussion is unnecessary as a refutation of the 102 rejection of these claims, in light of the above mentioned deficiencies.

In response to the 35 U.S.C. 103 rejections of claims 184 and 189, these claims are nonobvious over Day based on the above deficiencies. The rejection of claim 199 is traversed as well, because Gardenschwartz does not comprise the missing elements enumerated above nor does Gardenschwartz comprise a motivation to combine.

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Additionally, new claims 119-123 specify the distribution limit as a monetary budget limit: Day does not include a monetary budget limit, only a 'quantity limit' for the number of coupons that the Day system offers to customers. The following portions of applicant's specification help define the meaning of the term budget:

"At this point, the advertiser would also input, or the system or a systems operator would interact with the advertiser to determine the tentative budget for the advertiser's program, i.e. the total amount of money that the advertiser is intending to spend on the advertising program that is directed to the buying entities who have previously registered and submitted their purchasing histories. This budget figure could then be used as one factor to prioritize advertisements within a sequence of advertisements and to select one or a plurality of distribution channels. [...] The initial budget of the advertiser might be based on a fixed fee that is paid in exchange for a certain number of advertisements that are sent out in various ways to the buying entities (this is commonly referred to as "CPM" (cost per mille, which is the cost per one thousand advertising message sent out). Additionally or alternatively, it might be based on variable fee that depends on the number of responses from those who receive the advertisements (this is commonly referred to as "CPA", cost of action.) Note that the responses from those receiving the advertisement might be defined in several different ways and could include any or all of the following: clicks on banner ads or Emails sent, redeemed coupons, number of registrations at the site of the advertiser, number or \$ amount of trial purchases, and number or \$ amount of additional purchases over a certain time period." [Page 23 of the specification]

Clearly, the monetary budget in the present inventive system is a dollar or other currency figure that the advertiser is willing to spend, and is different from a quantity limit. This difference is sufficient to traverse a 102 rejection. Not only are the applicable definitions and common meanings of "budget" and "quantity limit" plainly different from each other, it should also be noted that the information conveyed as part of a budget figure in the present system is functionally different from that conveyed by a simple quantity limit in the Day system, and opens the present inventive system to different uses than a quantity limit does.

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The present inventive system allows for variable pricing in the course of the distribution of offers. The price for each offer that is provided to a buyer entity may vary in part based on whether or not the buyer entity responds to the offers (as per the excerpt above), and it may also vary depending on the distribution channel used, depending on the scores of the receiving buyer entities, and based on other factors. Because the price of each unit in the present inventive system varies in the course of the dynamic distribution of offers in the present inventive system, a static quantity limit entered by the advertiser would not allow the advertiser to limit, as taught by Day, or precisely define the amount of money s/he is spending on any particular campaign.

A monetary budget limit not only allows the advertiser to have greater predictability with respect to her expenses than a quantity limit does, it also allows a system to have greater flexibility with respect to the optimal choice of distribution channel, for instance by favoring a smaller quantity of offers distributed via a more expensive distribution channel over the distribution of a larger quantity via a less expensive channel. (The selection of distribution channels based on previously submitted budget information is disclosed in the specification in blocs 318 and 320 of Figure 3A for instance), and by being able to vary the quantity of offers depending on the level of responses (see excerpt above). In addition, budget information is material to the determination of a distribution priority. Clearly the total amount of money that an advertiser is willing to spend over a certain time period is material to the placement of an advertisement and to the implicit choice of a price point. As the present specification explicitly states:

In this context, the scores of a buying entity and other information in the stored record for that buyer entity, as well as the date and time, *advertiser budget*, location, and previous responses by that buyer entity to previous ads in the sequence or earlier sequences, may be used as factors to determine the priority that a particular advertisement gets within a particular distribution channel. [Page 26 of the specification]

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

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The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

6/30/04

By



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ANNOTATED DRAWING SHEET
Title: BUYER-DRIVEN TARGETING
OF PURCHASING ENTITIES
Inventor(s): Mark Landesmann
Appl. No.: 09/758,239

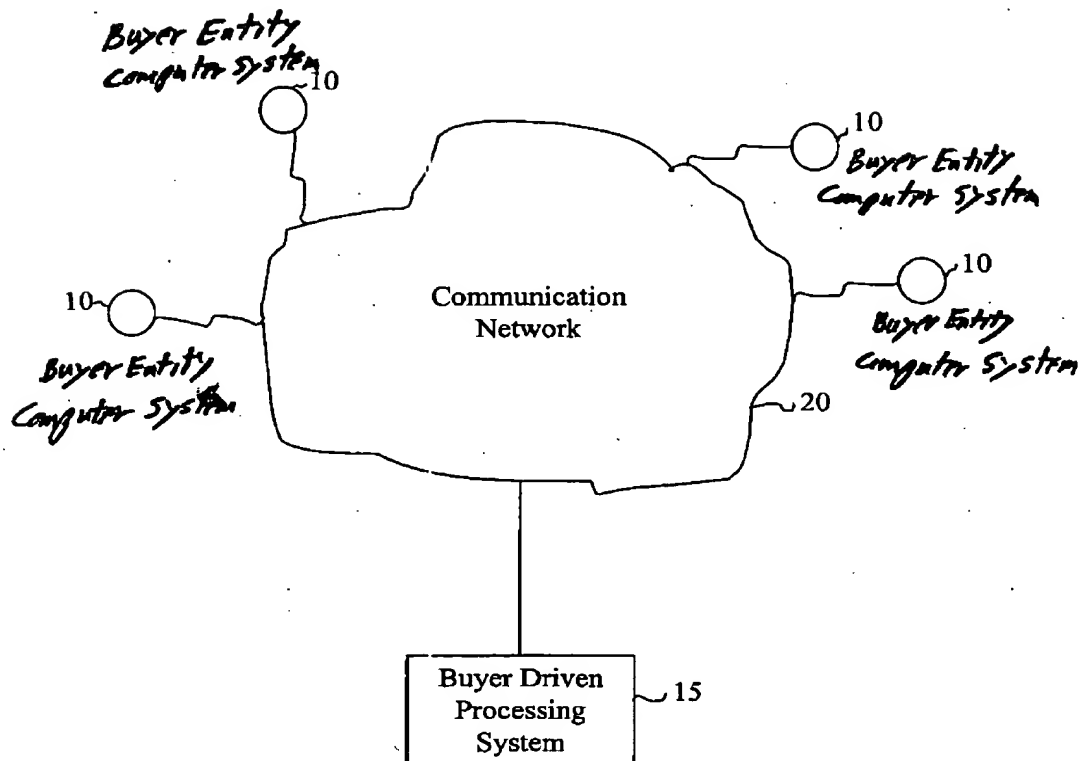


Fig. 1